



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Wm. Hurwitz
Assistant Criminal District Attorney
Longview, Texas

Dear Sir:

Opinion No. O-1104
Re: Whether described instrument must
be stamped before being admitted
to record.

We received your letter of July 8, 1939, enclosing copy of an instrument dated Shreveport, Louisiana, June 27, 1939, addressed to Motor Finance Company, Inc., Shreveport, Louisiana, signed and acknowledged by Victor Wenzel and Lena S. Wenzel, and reading as follows:

"Gentlemen:

"Simplex Oil Company, Inc. has this day executed in your favor a note for the sum of \$52,931.94 payable in installments as follows:

(There are then set out 13 monthly installments in varying amounts)

bearing eight per cent per annum . . . secured by mortgage on certain oil, gas and mineral leases owned by Simplex Oil Company, Inc., . . .

"This note was given to you as a consolidation of notes held by Motor Finance Company, Inc., and of the security therefor, and to additionally secure the same.

"We have personally endorsed the aforesaid note of even date herewith, and in order to further secure the same and provide for a means of liquidation in the event the makers should fail to pay the same as the installments respectively mature, we do hereby recognize that you are the holder of

(Four notes are described in amounts ranging from \$15,000.00 to \$28,621.84, dated from January 22, 1934, to July 22, 1936)

payable to your order and executed by Midway Petroleum Corporation, secured by deeds of trust covering the oil

and gas mining leasehold owned at the date of said notes by Midway Petroleum Corporation covering and affecting

(Certain lands are described and being the same lands covered by an oil and gas lease executed by Joe E. Lawther to Simplex Oil Company, Inc. on August 12, 1931)

and that the said Midway Petroleum Corporation has heretofore assigned to J. R. Querbes, Trustee, oil, gas and other minerals produced and saved from the said property, which is now owned by us.

"We further recognize that the said notes, deeds of trust and assignments are valid and subsisting and are held by you as security for the note of the Simplex Oil Company, Inc., of even date herewith for the sum of \$52,931.94 above described, and we do hereby pledge all sums hereafter accruing to us from the said Lawther Lease, under the terms of said assignments and the trust agreements and supplemental trust agreements executed by us pursuant thereto.

"In the event Simplex Oil Company, Inc., should fail to meet promptly at maturity any of the installments of the note of even date herewith given by it to Motor Finance Company, Inc., J. R. Querbes, Trustee, is authorized to pay over to the said Motor Finance Company, Inc., any sums then in his hands or thereafter coming into his hands, which would, under the aforesaid agreements be payable to Victor Wenzel and Lena S. Wenzel, up to but not exceeding a sum sufficient to meet the matured or maturing obligations of the Simplex Oil Company, Inc., to Motor Finance Co., Inc.

"It is the true intent of this agreement that, so long as any of the obligations of Simplex Oil Company, Inc. to Motor Finance Company, Inc., of even date herewith, remain past due and unpaid, all sums which under the present existing agreements are to be paid by J. R. Querbes, Trustee, to Victor Wenzel and Lena S. Wenzel, shall be paid by the said Querbes to Motor Finance Company, Inc. and credited on such matured obligations, and that this agreement shall continue in force until said note is completely liquidated."

Senate Bill No. 24, 46th Legislature, which amends Article 7047e, Revised Civil Statutes, reads, in part, as follows:

"(a) Except as herein otherwise provided there is hereby levied and assessed a tax of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instruments shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; . . ."

You request our opinion as to whether or not the above described instrument must be stamped in accordance with the provisions of said Senate Bill No. 24 in order to be recorded.

It is apparent from the above instrument that Victor Wenzel and Lena S. Wenzel have or claim to have some interest in the oil, gas and other minerals in the land described therein, and that on account thereof they expect to be paid certain funds from the operation of the lease thereon. Apparently such interest has been deeded to J. R. Querbes to hold in trust for them and they accordingly expect to receive from him any payments to which they may be entitled on account of their interest in such minerals. The effect of the instrument in question is to create a lien upon the mineral interest of Victor and Lena S. Wenzel to guarantee payment of the obligation of \$52,931.94 by Simplex Oil Company, Inc. to Motor Finance Company, Inc. It is provided that if at any time any part of the Simplex Oil Company, Inc.'s obligations should become past due and unpaid, any sums accruing to Victor and Lena S. Wenzel on account of their said mineral interest shall be paid to Motor Finance Company, Inc. and credited on said obligations of the Simplex Oil Company, Inc. The intention of the parties to create a lien being clear, the form of the instrument is immaterial. 29 Tex. Jur. p. 1192; Hume v. LeCompte, 142 S. W. 934, error refused; Dunman v. Coleman, 59 Tex. 199. Such lien is created by voluntary contract and in our opinion is of a similar nature to the liens specifically described

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in said Senate Bill No. 24. In our opinion such instrument must be stamped before it will be entitled to record.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Glenn R. Lewis
Assistant

GRL:N

APPROVED JUL 19, 1939

W. F. Moore (signed)
FIRST ASSISTANT ATTORNEY GENERAL

APPROVED
OPINION COMMITTEE
BY T. D. R.
chairman